entitled to the benefits that flow from that position.

I would mention in passing that at one stage I felt some difficulty about the case of one Koh Tion Meng, who appears to have worked for less than 200 days during the relevant period. He explained, however — and his explanation was accepted by the Assistant Commissioner for Labour — that he obtained permission for his numerous absences. Having regard to the picture as a whole I am not disposed to regard this particular instance as derogating from the validity of the respondents' case.

While it may well be that the appellant company now find themselves confronted with claims for benefits which they did not contemplate it seems to me that one must have regard to their conduct over the years and that of the respondents; and effect must be given to the resulting position, however financially disadvantageous to the company.

For these reasons the appeal must be dismissed and the order of the Assistant Commissioner for Labour affirmed.

The respondents will have the costs of this appeal, and of the proceedings before the Assistant Commissioner for Labour.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw*; *T. T. Rajah.*

CHONG CHIN NING v. REGINA

[A. Cr. J. (Rose C.J.) May 23, 1962]

[Singapore — Magistrate's Appeal No. 35 of 1962]

Shop Assistants Employment Ordinance, 1957, s.35(1) and (2) — Goods sold by shopkeeper on five-foot-way of shop on day shop required to be closed — Whether contravention of section 35(1) — Meaning of "premises".

A five-footway or a pavement outside a shop is not "premises" within the meaning of the Shop Assistants Employment Ordinance, 1957.

A shopkeeper need not exhibit Form A conspicuously in his shop as required by section 35(2) of the Shop Assistants Employment Ordinance on the day of the week he is required to entirely close his shop.

[Editorial Note: Premises of pharmacists, chemists or druggists are exempted by section 35 and Schedule A(a) of the Shop Assistants Employment Ordinance, 1957.

The appellant in this case was convicted on two charges, reading as follows:

" (1) That you, being the employer of Yan Siew Choon, No. 39 Seng Poh Road, Singapore, did fail to cause the said shop to remain entirely closed on Friday, 6th October, 1961, which day had been specified by you to be the closing day and thereby committed an offence under section 35(1) of the Shop Assistants Employment Ordinance, No. 13 of 1957, punishable under section 44 of the same Ordinance.

(2) Did fail to exhibit Form A permanently in a conspicuous place in the said shop as required under section 35(2) of the Shop Assistants Employment Ordinance, punishable under section 44 of the same Ordinance."]

MAGISTRATE'S APPEAL.

David Marshall for the appellant.

A. W. Ghows (Senior Crown Counsel) for the respondent.

Rose C.J. (delivering oral judgment): This is an interesting and somewhat complicated case in which the appellant appears to be a joint partner in at least two concerns and possibly a third. He is a half-partner, apparently, in a Chinese medicine shop which consists of half of the premises in question and he is also a partner, one of two partners, in a dry goods business which occupies the other half of these premises. The evidence is that one lot of shelves carries the goods of the one business and another lot of shelves carries the goods of the other; and there is a common door entering into these two places.

There is no doubt, of course, that the medicine side is entitled to be kept open for seven days a week. That being so, it follows that the door, there being only one door, is entitled to be kept open for seven days a week.

The evidence in this case, it appears to be common ground is that as far as the sundry dry goods are concerned the goods were covered by some kind of covering cloth or tarpaulin or what have you. But what is suggested that happened in this case is that on the pavement outside no stalls were involved, no erection of any kind but on the pavement outside some goods of a different nature were being sold. Now there appeared to be some slight dispute between learned counsel as to whether that was the position or not but I think, as is pointed out at page 3 of the record, the matter is put into proper perspective when the Labour Officer says that the goods displayed outside were crockery, plastic wares and some other things and that the goods displayed inside were hair cream, thermos flasks, sundry goods and then when he is asked, "Would you agree that the nature of the goods sold inside is different from the goods sold outside on the pavement? and he answered, "Yes".

Now it appeared to be the custom for these goods outside to be sold on the six days when the shop was opened and also on part of the seventh day when the shop was closed and it is with regard to that matter that all this palaver is about.

It appeared that on the day in question this Labour Officer observed a woman or two women at different times make some small purchase outside and that, in due course after a few cents changed hands, the appellant and I think his partner and an employee carried these goods inside the shop.

Well now he is charged with regard to the first charge with failing to cause the shop to remain entirely closed. The medicine shop is irrelevant in this case. The shop is that portion of the premises which sold these sundry dry goods. The question is whether the goods that were sold on the pavement were of a different type to

those sold inside, where it could be said to be the shop or part of the shop. I see the point made by Mr. Ghows, learned Crown Counsel, that the purpose of the legislation is to protect employees and the law might be evaded by having employees selling goods outside the shop. That may be so. It is not for me, I think, to express a view upon that. The question I have to decide is whether this area or pavement upon which the goods were sold can be held to be premises or part of the shop. Well now, can a bit of pavement without a stall, without any form of equipment, may I put it that way, can it be held to be premises within the meaning of the Shop Assistants Employment Ordinance? I suppose there might be two views on it. But I must say that my view is that it cannot. I think that a five-foot-way or a pavement outside the shop is not premises and in the absence of any direct authority it seems to me reasonable to hold that they are not premises. That being so, it seems to me that we need not go into the details of what these two ladies bought on that particular day. The first charge must therefore fail and the appeal must be allowed as to that.

The question then arises as to the second charge which is that the appellant failed to exhibit Form A permanently in a conspicuous place in the said shop. Now I must say that I think here that learned Crown Counsel will probably agree that this was part of the history of the first charge and I think if the first charge fails I really do not see that the second charge can stand because the shop in question was shut on the day in question and without wishing to lay down any principle of law in conflict with anything that Lord Justice Parker may have said I should have thought myself that if your shop is closed that you are not defeating any great purpose of the legislature if your Form is taken down from its hook and put into a drawer and put on a hook again when you open the next morning.

The appeal must therefore be allowed and the conviction and sentences set aside. The fines will be refunded.

Appeal allowed.

PUBLIC PROSECUTOR v. MOHAMED ALI

[A. Cr. J. (Thomson C.J.) February 9, 1962]

[K.L. — Criminal Appeal No. 3 of 1962]

Evidence — Police witness — Acceptance of, in absence of contradiction or inherent probability.

Road Traffic — Evidence of speed limit area — Evidence Ordinance, 1950, s.57(1)(a) — Judicial notice of legal notification — Refusal to accept evidence of police witness.

When a police witness says something that is not inherently improbable his evidence must in the first instance be accepted. If his evidence is contradicted by other evidence or is shaken by cross-examination then it becomes the business of the Magistrate to decide whether or not it should be accepted. In the absence of contradiction, however, and in the absence of any element of inherent probability the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted.

Observations on Magistrates taking judicial notice of legal notifications.

CRIMINAL APPEAL.

Raja Abdul Aziz (Deputy Public Prosecutor) for the appellant.

Respondent not represented.

Thomson C.J.: This is an appeal against a judgment of one of the Kuala Lumpur Magistrates and I am compelled to say straightaway that I have seldom come across anything more perverse or lacking in rudimentary commonsense.

The respondent was charged with driving a motor van in Princes Road, Kuala Lumpur, at a speed exceeding 20 miles per hour. He claimed trial and at the close of the prosecution case the Magistrate held there was no case to answer and made an order of acquittal and discharge. The Public Prosecutor appealed against that decision and some time later the Magistrate put on record grounds of judgment which would appear to have very little in common with whatever he had in mind when he discharged the respondent.

The evidence for the prosecution was that of a Police corporal who said that he was on duty on a motor-cycle in Princes Road when he saw the respondent driving a motor van. He followed the van for about half a mile and his speedometer showed between 35 to 38 miles per hour. He then overtook the van and stopped it. He said "Princes Road is a 20 m.p.h. area". This witness was not cross-examined by the defendant nor was he asked any question by the Magistrate, who when he had heard his evidence dismissed the summons.

In his grounds of judgment the Magistrate has given two reasons for taking that course.

The first is that the complainant, that is the Police corporal, "only suspected that the defendant was speeding because when he followed the defendant his motor-cycle speedometer was showing 35-38 m.p.h. This may be quite true because he had to speed up in order to reach behind the defendant's car. But what was the actual speed of the defendant's car at that time?" This passage is simply putting words into the witness's mouth. The witness did not say anything about having to increase his speed to "reach behind" the respondent's van. What he said was that he followed it for about half a mile. If the Magistrate had had any doubts as to what the witness intended to convey he should have asked him a question to elucidate his meaning.

The second reason stated by the Magistrate was that the witness stated: "that Princes Road